



## City of Wheatland

111 C Street – Wheatland, California 95692  
Tel (530) 633-2761 – Fax (530) 633-9102

### PLANNING COMMISSION MEETING STAFF REPORT

Date: November 16, 2010  
Agenda Item:

**Subject:** Bishop's Pumpkin Farm Annexation

**Prepared by:** Tim Raney, Community Development Director

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#### **Recommendation:**

City staff requests that the Wheatland Planning Commission make the following recommendations to City Council:

- Approval of the Mitigated Negative Declaration and Mitigation Monitoring Plan;
- Adopt a Resolution approving the Annexation of 43.57 acres into the City of Wheatland;
- Adopt an Ordinance approving the Prezone of the project site to AE-PD and adopting the PD Standards;
- Adopt an Ordinance authorizing the City Manager to enter into a Development Agreement.

#### **Background:**

Bishop's Pumpkin Farm is located at 1415 Pumpkin Lane in the City of Wheatland. Bishop's Pumpkin Farm has been a family operation serving the Wheatland community and the region since 1973, and is currently operating under a Conditional Use Permit issued by Yuba County.

Bishop's Pumpkin Farm consists of approximately 40 acres and the primary pumpkin sales and related operations occur from mid-September through the end of October. Typical hours of operation during this time are Sunday through Thursday, 9:00 am to 6:00 pm, and on Friday and Saturday, 9:00 am to 7:00 pm. The main function of Bishop's is the selling of pumpkins; however, many ancillary activities occur, including hay rides, pony rides, corn maze, petting zoo, and rides on the Bishop's Pumpkin Farm railroad. The farm also provides entertainment events such as pig races and chicken show. In addition, the Bishop's Pumpkin Farm offers a retail area which sells food,

baked goods, candy, and specialty gift items. During the spring months Bishop's Pumpkin Farm offers an educational program called Hamburger Farm, which provides a tour of the farm showing all the crops needed for making a hamburger. In addition, the Bishop's Pumpkin Farm allows special events at the site during off peak times. Events include company picnics, birthday parties and other large gatherings. The Farm also hosts community events such as a 5K Pumpkin Run/Walk for the Red Cross, as well as music and children's events.

The Bishops have requested that the City of Wheatland annex the pumpkin farm property and have submitted an application requesting Council approval of an annexation resolution and pre-zoning of the site to Agriculture Exclusive - Planned Development (AE-PD) zone. The existing Wheatland General Plan designation of the site is Park and the proposed pre-zoning and existing use of the site is consistent with the General Plan designation. The applicant is not seeking to change the existing use of the site.

### **Discussion:**

#### *Annexation*

The proposed annexation will allow the Bishop's Pumpkin Farm to connect to the City's water and wastewater system. The applicant will be responsible for connecting to the existing City water and sewer systems through an existing easement along Pumpkin Lane, which serves as the primary access to the site. The applicant will construct water and sewer mains from existing water and sewer mains at the southerly terminus of G Street approximately 1,900-feet to their property. The applicant will also construct a privately owned and operated sewer lift station for collection and conveyance of wastewater generated on their site. The existing septic systems will be abandoned in accordance with County standards, and any connections to the existing water wells for domestic use will be removed and remaining wells will be used only for agricultural purposes.

If the City Council approves the annexation request, an application will be submitted to the Yuba County Local Agency Formation Commission (LAFCO) for annexation. LAFCO will review the application for consistency with its policies and procedures. In addition, a property tax sharing agreement will need to be negotiated between Yuba County and the City of Wheatland prior to LAFCO action.

#### *Prezoning/Planned Development*

The proposed prezone of the site is to Agriculture Exclusive - Planned Development (AE-PD). The current Wheatland General Plan designation for the site is Park. The purpose of the Planned Development designation is to ensure that the agricultural entertainment facility of Bishop's Pumpkin Farm is maintained as an asset to the community and remains consistent with the City of Wheatland General Plan. The Planned Development identifies the permitted, accessory, and conditional uses, as well as the land use intensity. The Planned Development also outlines architectural standards and development regulations.

### *Development Agreement*

The City and the applicant have been negotiating a development agreement in order to ensure that the City receives contributions from the applicant to mitigate the impacts from the project, and that the applicant will receive the facilities and services from the City necessary for annexation of the property.

### *Environmental Review*

An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared for the proposed project. The IS/MND addressed all the subjects required pursuant to the California Environmental Quality Act. Mitigation was required for transportation and circulation impacts, cultural resource impacts, public services impacts, and utilities impacts. The IS/MND concludes that with the implementation of mitigation measures, all impacts would be reduced to a less-than-significant level. A Mitigation Monitoring Plan (MMP) has been prepared in compliance with CEQA in order to ensure implementation of the mitigation measures outlined in the IS/MND.

The IS/MND was routed for public review from July 9, 2010 to August 9, 2010. One comment was received from the State Clearinghouse noting that we have complied with the review requirements. Additional comments have not been received.

It should be noted that although the IS/MND did not specifically mention the Development Agreement as an entitlement, the Development Agreement would not result in any impacts that were not addressed in the Initial Study. The environmental document prepared is adequate for the purposes of the approval of a Development Agreement.

### **Alternatives:**

The Planning Commission could decide to not annex the Bishop's Pumpkin Farm into the City of Wheatland and to allow the operations to remain under the jurisdiction of Yuba County even though many of the direct impacts to the facility are within the City of Wheatland.

### **Exhibits:**

Resolution Approving the Annexation  
Ordinance Approving the Prezone and approving the Planned Development  
Ordinance Approving the Development Agreement  
Mitigated Negative Declaration & Mitigation Monitoring Plan

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHEATLAND  
APPROVING THE APPLICATION FOR THE BISHOP'S PUMPKIN FARM  
ANNEXATION OF TERRITORY TO THE CITY OF WHEATLAND**

The City Council of the City of Wheatland does resolve as follows:

- A. An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared for the proposed project. The IS/MND addressed all the subjects required pursuant to the California Environmental Quality Act.
- B. A Mitigation Monitoring Plan (MMP) has been prepared in compliance with CEQA in order to ensure implementation of the mitigation measures outlined in the IS/MND.
- C. The City has received an application requesting the annexation of certain real property into the City of Wheatland. The property is shown in Exhibit A, attached hereto and by this reference incorporated herein.
- D. The subject property is within the City of Wheatland Sphere of Influence as adopted by LAFCO.
- E. The Planning Commission reviewed the annexation on November 16, 2010, and recommended City Council approval.

The City Council hereby approves the Annexation application concerning the 43.5± acres for the Bishop's Pumpkin Farm project site to the City of Wheatland, subject to the approval of the Yuba County LAFCO.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by the following vote:

AYES:

NOES:

ABSENT:

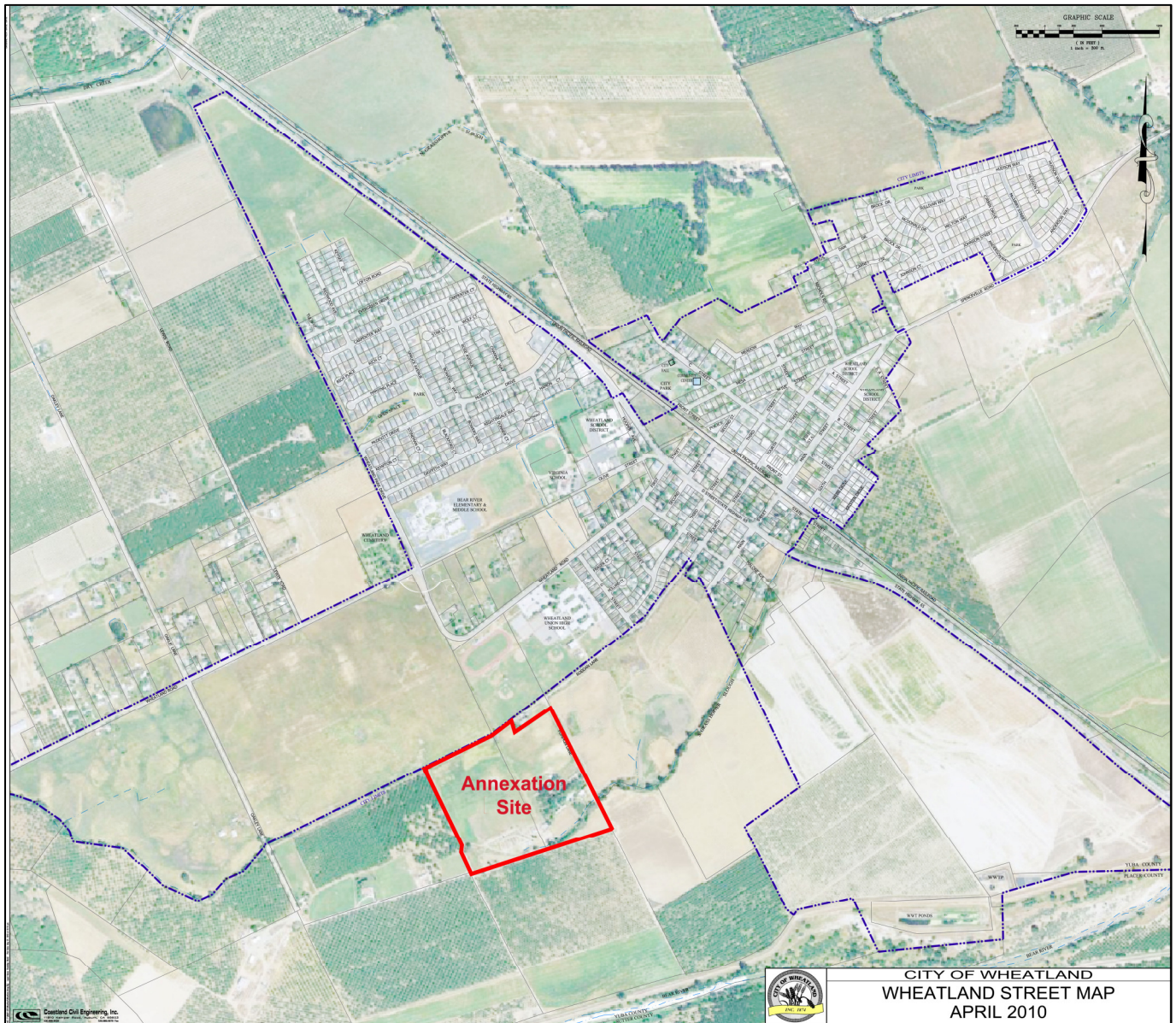
ABSTAIN:

\_\_\_\_\_  
Enita Elphick, Mayor

Attest:

\_\_\_\_\_  
Lisa J. Thomason, City Clerk

# EXHIBIT A Annexation Map



**ORDINANCE NO. \_\_\_\_\_**

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHEATLAND  
APPROVING THE PREZONING TO AGRICULTURAL EXCLUSIVE  
PLANNED DEVELOPMENT (AE-PD) AND ADOPTING THE PLANNED  
DEVELOPMENT STANDARDS**

The City Council of the City of Wheatland does ordain as follows:

**Section 1. Authority.** This ordinance is adopted pursuant to Government Code sections 65853-65859, and other applicable law.

**Section 2. Findings.** The City Council finds and determines as follows:

- A. The Planning Commission conducted a duly noticed public hearing concerning the proposed prezoning on November 16, 2010, and recommended City Council approval.
- B. The City Council of the City of Wheatland finds and determines that the City Council has conducted a duly noticed public hearing concerning this proposed prezoning in accordance with applicable law.
- C. An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared for the proposed project. The IS/MND addressed all the subjects required pursuant to the California Environmental Quality Act.
- D. A Mitigation Monitoring Plan (MMP) has been prepared in compliance with CEQA in order to ensure implementation of the mitigation measures outlined in the IS/MND.
- E. The proposed prezoning to AE-PD is consistent with and would implement the policies of the City of Wheatland General Plan.
- F. The area is physically suited to the uses authorized in the proposed zone.
- F. The proposed prezoning is compatible with the land uses existing and permitted on the properties in the vicinity.
- G. The land uses and their density and intensity, allowed in the proposed zones are not likely to create serious health problems or create nuisances on properties in the vicinity.
- H. Government Code Section 65859 authorizes the City to prezone unincorporated territory to determine the City zoning that will apply to that territory upon annexation to the City.



**Section 3. Planned Development.** The City Council finds that the proposed Bishop's Pumpkin Farm Planned Development as shown in Exhibit B, attached hereto and incorporated by reference herein, is consistent with the Zoning Ordinance Chapter 18.51, Planned Development Zone.

**Section 4. Severability.** If any part of this ordinance is held by a court of competent jurisdiction to be invalid or unenforceable, then such decision shall not affect the validity of the remaining parts, which shall remain in full force and effect.

**Section 5. Effective Date.** This ordinance shall take effect 30 days after its final passage.

**Section 7. Publication.** Within 15 days from the date of passage of this ordinance, the City Clerk shall post a copy of it in at least three public places in the City.

INTRODUCED by the City Council on the \_\_\_\_ day of \_\_\_\_\_ 2010.

PASSED AND ADOPTED by the City Council of the City of Wheatland this \_\_\_\_ day of \_\_\_\_\_, 2010 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

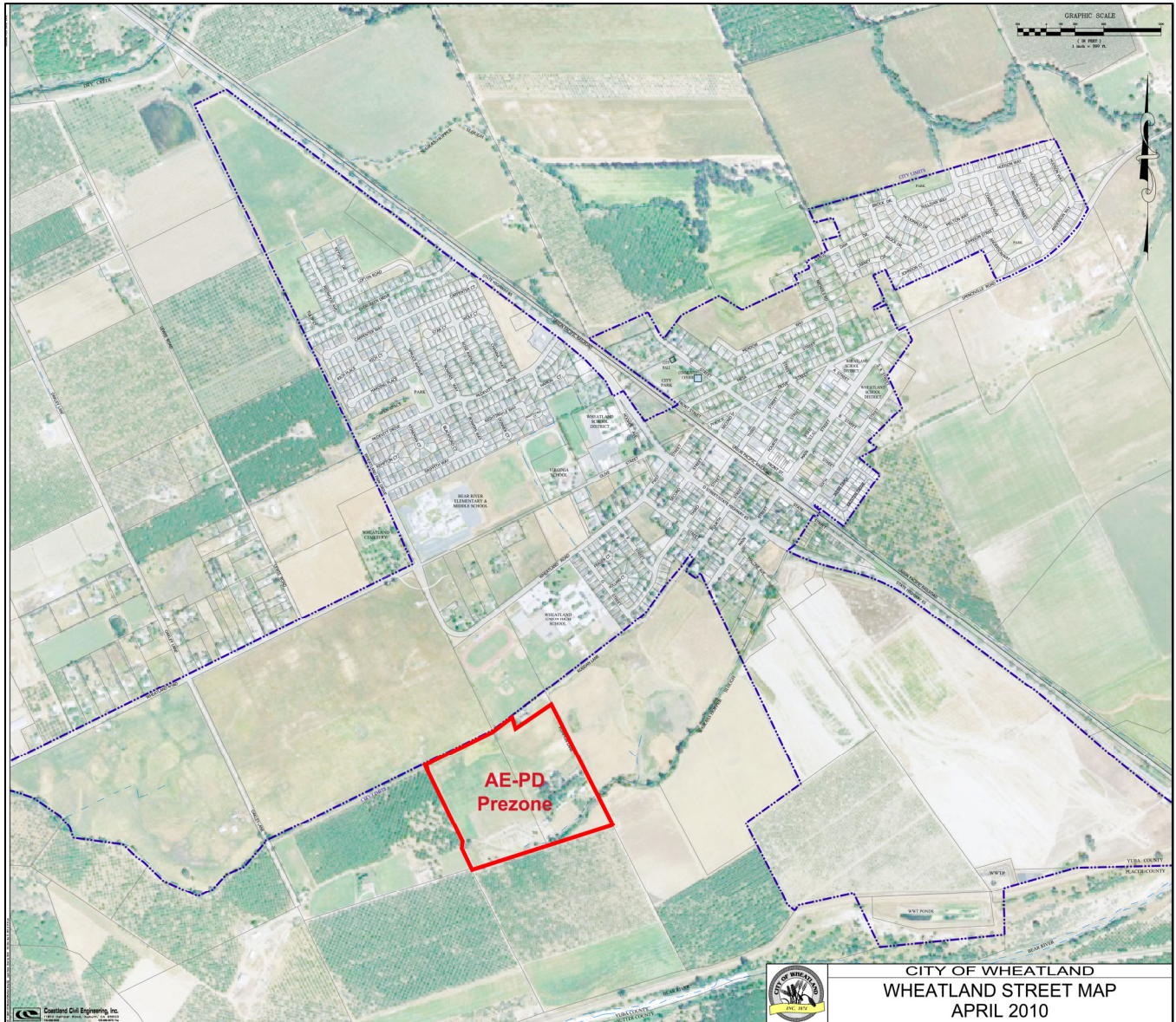
\_\_\_\_\_  
Enita Elphick, Mayor

Attest:

\_\_\_\_\_  
Lisa J. Thomason, City Clerk

**EXHIBIT A**

**PROPOSED PREZONING MAP**





## **EXHIBIT B**

### **BISHOP'S PUMPKIN FARM PLANNED DEVELOPMENT ZONE**

#### **I. PURPOSE**

The purpose of the Bishop's Pumpkin Farm Planned Development Zone (Planned Development) is to create a zone which reflects the goal of maintaining an Agricultural Entertainment/Tourism area that reflects the agricultural heritage of the City of Wheatland. The Planned Development applies to the site as shown on the attached Exhibit A. The Planned Development is consistent with the City of Wheatland General Plan designation of Park for the site. The Economic Development Chapter of the Wheatland General Plan notes that tourism needs to be expanded to strengthen Wheatland's economy. The General Plan also notes Wheatland's historical character and attractions such as Bishop's Pumpkin Farm are an important part of this effort. General Plan Policy 3.C.5 states "[...] the City shall cooperate with efforts to expand activities and facilities of the Bishop Pumpkin Farm." The proposed annexation and maintaining of the existing uses at the Bishop's Pumpkin Farm are consistent with the existing Park General Plan designation.

#### **II. LAND USE**

##### **A. Zoning**

The zoning for the Planned Development site is Agriculture-Exclusive (A-E). The A-E zone is intended to be applied in areas where agriculture is and should be the desirable predominant use. This Planned Development defines the specific development standards for the site.

##### **B. Permitted and Accessory Uses**

The principal permitted and accessory uses in the Bishop's Pumpkin Farm Planned Development shall be:

1. One single family dwelling;
2. Pumpkin sales;
3. Sales of ancillary items related to the agricultural entertainment/tourism such as food and minor specialized retail; and
4. Limited events promoting agricultural entertainment/tourism.

The determination of the types of retail and events that are permitted shall be at the discretion of the Community Development Director. The

Community Development Director has the discretion to ask the Planning Commission to make a determination.

C. Conditional Uses

The uses below are permitted only with the approval of a Conditional Use Permit by the Planning Commission:

1. Large scale special events promoting agricultural entertainment/tourism;
2. Building or group of buildings exceeding 4,000 square feet for the purpose of retail sales related to agricultural tourism;

D. Land Use Intensity

The intent of the Planned Development zone for Bishop's Pumpkin Farm is to promote agricultural entertainment/tourism. The primary use of the land, shall therefore be, the growing of agricultural products. Ancillary buildings consistent with the uses above are allowed provided the primary use of the site is the production of crops.

### III. ARCHITECTURAL STANDARDS

A. Structures

All buildings and structures constructed on the site shall have an agricultural theme consistent with the existing theme of Bishop's Pumpkin Farm. All structures requiring a building permit shall be reviewed and approved by the Community Development Director. Small storage/maintenance buildings that are not part of the main activities are exempt from the agricultural theme.

B. Landscaping

Because the primary site use is agricultural production, landscaping is limited. However, in the more retail-oriented portions of the site, landscaping shall be provided as required in Wheatland Municipal Code Section 18.60.130.

C. Signage

All proposed signs shall comply with the City's Sign Ordinance.

D. Other Development Features

Within the Planned Development, Bishop's Pumpkin Farm shall also have the ability to construct buildings/features related to agricultural tourism (i.e., small unusual buildings, train stations, petting zoo, and coyote mountain). These unique features shall be reviewed and approved by the Community Development Director.

IV. DEVELOPMENT REGULATIONS

A. Lot Area

The minimum lot area in this Planned Development is 40 acres.

B. Setbacks

Structures shall be set back a minimum of 20 feet from property lines. Distance between structures shall be consistent with Building Code requirements.

C. Height Limits

Buildings shall not exceed 35 feet in height.

D. Parking

Parking shall be as it is for existing operations at the time of annexation. Parking required for any new structures or uses proposed shall be determined by the Community Development Director in conjunction with the approval of each building permit or by the Planning Commission in conjunction with a Conditional Use Permit, if required.

V. IMPLEMENTATION AND ADMINISTRATION

The existing uses at Bishop's Pumpkin Farm are permitted. Any additional uses will be reviewed and approved by the Community Development Director. The Director will determine whether the use is a permitted use or one that requires a Conditional Use Permit as defined above. The intent is to facilitate on-going operations of Bishop's Pumpkin Farm while ensuring that future uses are consistent with the City's vision for the site as an agricultural entertainment/tourism facility.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF WHEATLAND APPROVING THE  
DEVELOPMENT AGREEMENT AMENDMENT BETWEEN THE CITY OF  
WHEATLAND AND WILLIAM AND SANDRA BISHOP**

The City Council of the City of Wheatland does ordain as follows:

**Section 1. Purpose.** The purpose of this Ordinance is to approve a Development Agreement to be entered into between the City of Wheatland and William and Sandra Bishop relative to the Bishop's Pumpkin Farm annexation, which is more particularly described in said Agreement.

**Section 2. Findings.** The City Council hereby finds and declares:

- A. The Planning Commission conducted a duly noticed public hearing concerning the proposed Development Agreement on November 16, 2010, and recommended City Council approval.
- B. The City Council of the City of Wheatland finds and determines that the City Council has conducted a duly noticed public hearing concerning this proposed Development Agreement in accordance with applicable law.
- C. An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared for the proposed project. The IS/MND addressed all the subjects required pursuant to the California Environmental Quality Act.
- D. A Mitigation Monitoring Plan (MMP) has been prepared in compliance with CEQA in order to ensure implementation of the mitigation measures outlined in the IS/MND.
- E. The proposed Development Agreement is consistent with and would implement the policies of the City of Wheatland General Plan.
- F. The Agreement Amendment is consistent with and conforms to the requirements of Government Code Sections 65864-65869.5.
- G. The Agreement Amendment is consistent with the provisions of the City Council Establishing Procedures for Consideration of Development Agreements.

**Section 3. Approvals.** The Development Agreement is hereby approved and the Mayor and City Clerk are authorized and directed to execute said Agreement Amendment on behalf of the City of Wheatland.

The City Clerk shall cause the Development Agreement to be recorded in the Official



Records of Yuba County upon execution, but in no event prior to the effective date of this ordinance.

**Section 4. Effective Date and Notice.** This ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days from the passage of this ordinance, the City Clerk shall post a copy of it in at least three public places in the City of Wheatland.

INTRODUCED by the City Council on the \_\_\_\_ day of \_\_\_\_\_ 2010.

PASSED AND ADOPTED by the City Council of the City of Wheatland this \_\_\_\_ day of \_\_\_\_\_, 2010 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Enita Elphick, Mayor

Attest:

\_\_\_\_\_  
Lisa J. Thomason, City Clerk

Recording requested by, and  
When recorded return to:

City of Wheatland  
111 C Street  
Wheatland, CA 95692

*Exempt from recording fees (Government Code sections 6103 & 27383)*

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**CITY OF WHEATLAND  
DEVELOPMENT AGREEMENT  
CONCERNING BISHOP PUMPKIN FARM**

This Development Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Wheatland, a general law city ("City"), and William and Sandra Bishop, individuals and husband and wife ("Property Owner") (collectively the "Parties"), who agree as follows:

**1. RECITALS.** This Agreement is made with reference to the following background recitals:

**1.1. Authorization.** Government Code section 65864 et seq. (the "Development Agreement Law") authorizes the City and a property owner to enter into a development agreement to establish certain development rights in the real property that is the subject of the Agreement. This Agreement is entered into pursuant to the authority of the Development Agreement Law and City's development agreement ordinance.

**1.2. Property.** The subject of this Agreement is the annexation, use and development of that certain parcel of land located within the City, consisting of approximately 40 acres as described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). Property Owner owns the Property in fee.

**1.3. Approval of Agreement.** On \_\_\_\_\_, 2010, the City Planning Commission, in a duly noticed and conducted public hearing, considered this Agreement and recommended that the City Council approve this Agreement. On \_\_\_\_\_, 2010, after a duly noticed and conducted public hearing, the City Council adopted this Agreement pursuant to Ordinance No. \_\_\_\_.

**1.4. CEQA.** City caused a mitigated negative declaration to be prepared and approved pursuant to the California Environmental Quality Act (CEQA) for the Project described below. See City Council Resolution No. \_\_\_\_\_ (the "Mitigated Negative Declaration").

**1.5. Entitlements.** The City Council has approved the following land use entitlements for the Property, which entitlements are the subject of this Agreement:

1.5.1. The City's General Plan as it exists on the Effective Date;

1.5.2. The rezoning of the Property pursuant to the Bishop's Pumpkin Farm Planned Development Zone as approved by Ordinance No. \_\_\_\_\_, adopted on \_\_\_\_\_, 2010;

1.5.3. Such other ordinances, rules, regulations and official policies governing and applicable to the use and development of the Property in force on the Effective Date, except as they may be in conflict with a provision of this Agreement; and,

1.5.4. This Development Agreement as approved by Ordinance No. \_\_\_\_ (the “Adopting Ordinance”), adopted on \_\_\_\_\_, 2010 (the “Approval Date”) and as effective on \_\_\_\_\_, 2010 (the “Effective Date”).

The approvals described above are referred to as the “Entitlements.” The “Project” for purposes of this Agreement is the annexation, use and development of the Property in accordance with the Entitlements.

**1.6. General Plan.** Use and development of the Property in accordance with this Agreement and the other Entitlements will provide orderly growth and development of the area in accordance with the policies set forth in the General Plan. Having duly examined and considered this Agreement and the Entitlements and having held properly noticed public hearings, the City finds that this Agreement is consistent with the City General Plan.

**1.7. Need for Services and Facilities.** Development of the Property will result in a need for municipal services and facilities, which services and facilities will be provided by City to such development, subject to the performance of the obligations of Property Owner under this Agreement. Property Owner agrees to contribute to the costs of such public facilities and services as are required to mitigate impacts of the development of the Property on the City, and City agrees to provide such public facilities and services to assure that Property Owner may proceed with the use and development of the Property in accordance with the terms of this Agreement. City and Property Owner recognize and agree that but for Property Owner’s contributions to mitigate the impacts from the Project, City would not approve the annexation and development of the Property as provided by this Agreement and that, but for City’s covenant to provide the facilities and services necessary for annexation and development of the Property, Property Owner would not commit to provide the mitigation and obligations as set forth in this Agreement. City’s support for annexation and vesting of the right to use and develop the Property is in reliance upon and in consideration of the agreement of Property Owner to make contributions toward the cost of public improvements and services as provided in this Agreement to mitigate the impacts of the Project.

**1.8. Property Owner’s Faithful Performance.** The Parties agree that Property Owner’s performance in using and developing the Project on the Property and in complying with the Entitlements and the terms of this Agreement will fulfill substantial public needs. The City agrees that there is good and valuable consideration to the City resulting from Property Owner’s assurances and faithful performance of this Agreement, and that the same is in balance with the benefits conferred by the City on the Project. The Parties further agree that the exchanged consideration is fair, just and reasonable.

## **2. GENERAL PROVISIONS.**

**2.1. Annexation--Condition Precedent.** The Parties acknowledge that at the Effective Date the Property is not located within the City limits, but that annexation proceedings are pending before the Yuba County Local Agency Formation Commission. Therefore, pursuant to Government Code section 65865(b), this Agreement shall not become operative until annexation proceedings annexing the Property to the City are completed. If the annexation is not completed by \_\_\_\_\_ (or such later date as may be approved by the Parties in writing), then this Agreement shall be null and void.

**2.2. Property Description and Binding Covenants.** The Property is that real property described and shown in Exhibit A. It is intended and determined the provisions of this Agreement shall constitute

covenants that shall run with the Property for the term of the Agreement and the benefits and burdens of this Agreement shall bind and inure to all successors in interest to the Parties.

### **2.3. Term.**

2.3.1. Commencement; Expiration. The term of this Agreement shall commence upon the Effective Date and shall extend for a period of 20 years thereafter, unless the term is terminated, modified or extended as provided by this Agreement or by mutual written consent of the Parties.

2.3.2. Amendment of Agreement. This Agreement may be amended from time to time by mutual written consent of the Parties in accordance with the Development Agreement Law. Amendment by City requires approval by the City Council of City. If the proposed amendment affects less than the entire Property, then such amendment need only be approved by the owner(s) in fee of the portion(s) of the Property that is(are) subject to or affected by such amendment. The parties acknowledge that under the City Zoning Code and applicable rules, regulations and policies of the City, the Planning Director has the discretion to approve minor modifications to approved land use entitlements without the requirement for a public hearing or approval by the City Council. Accordingly, the approval by the Planning Director of any minor modifications to the Entitlements that are consistent with this Agreement shall not constitute nor require an amendment to this Agreement to be effective.

2.3.3. Recordation. Except when this Agreement is automatically terminated due to the expiration of its term, the City shall cause any amendment to it or any other termination of it to be recorded, at Property Owner's expense, with the County Recorder within 10 days of the date of the amendment or termination becoming effective. Any amendment or termination of the Agreement to be recorded that affects less than all the Property shall describe the portion that is the subject of such amendment or termination.

2.3.4. Effect of City Admissions Tax. If City, during the term of this Agreement, adopts a City-wide admissions tax (i.e., a tax on the right or privilege to enter or occupy entertainment, amusement, recreational or sport related property and to observe or participate in any entertainment, amusement, recreational or sport event or activity), then upon the effective date of the tax, this Agreement shall terminate and Property Owner thereafter shall pay an admissions tax as may be required by the City admissions tax ordinance. However, any such City-wide admissions tax shall provide that, as applied to the Property, section 4.2.6 of this Agreement concerning City use of the admission tax revenue shall apply to any tax revenue generated from the Property for the duration of the term of the Agreement. If the City adopts an admissions tax that does not so provide, then this Agreement shall not terminate upon the effective date of the tax, Property Owner shall continue to pay the Admissions Fee to City until expiration or termination of the Agreement, and Property Owner shall be exempt from the admissions tax until expiration or termination of the Agreement.

## **3. CITY COMMITMENTS.**

### **3.1. Development of the Property.**

3.1.1. Permitted Uses. The permitted uses of the Property, the density and intensity of use, setback requirements, maximum height and size of buildings and structures, and other terms and conditions of use and development of the Property shall be those set forth in this Agreement and the other Entitlements.

3.1.2. Vested Entitlements. Subject to the provisions of this Agreement, City hereby grants a fully vested entitlement and right to use and develop the Property in accordance with the terms and



conditions of this Agreement and the other Entitlements. The Project land uses allowed by the Entitlements are permitted to be continued and developed in accordance with the Entitlements, as such Entitlements provide on the Effective Date of this Agreement. With the consent of Property Owner and City, nothing in this Agreement shall preclude the City from processing and approving amendments to the vested Entitlements. Regarding the future development of the Property, such development shall be subject to subsequent City land use and building approvals (other than the Entitlements) that may be required for the development of the Property. Property Owner's vested right under this Agreement is limited to the Entitlements as described above.

3.1.3. Future City Rules and Regulations. To the extent any future City rules, ordinances, regulations or policies applicable to development of the Property are inconsistent with the permitted uses, density and intensity of use, or maximum building height and size under the Entitlements as provided in this Agreement, the terms of the Entitlements and this Agreement shall prevail, unless the parties agree otherwise in writing or agree to amend this Agreement. To the extent any future rules, ordinances, fees, regulations or policies applicable to development of the Property are not inconsistent with the permitted uses, density and intensity of use, or maximum building height and size under the Entitlements or under any other terms of this Agreement, such rules, ordinances, fees, regulations or policies shall be applicable.

3.1.4. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465 that failure of the parties to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the intent of the Property Owner and City to cure that deficiency by acknowledging and providing that Property Owner shall have the right (without the obligation) to develop the Property in such order and at such rate and at such time as it deems appropriate within the exercise of its subjective business judgment, subject to the terms of this Agreement.

**3.2. Exceptions; Application of Changes.** This Agreement shall not preclude, prohibit or limit the application of any of the following to the Property or Project:

3.2.1. Any new or amended City-wide ordinance, resolution, rule, regulation or policy that does not conflict with the Entitlements or those ordinances, resolutions, rules, regulations and policies in effect at the Effective Date, and that is generally applied equally to all real property in the City with similar zoning designations and/or land uses.

3.2.2. Any new or amended City ordinance, resolution, rule, regulation or policy that is mandated by changes in federal or state law or regulation that may be applicable to the Property or Project.

3.2.3. Any new or amended building codes, including, but not limited to, the California Building Code, Uniform Fire Code, Uniform Mechanical Code, Uniform Plumbing Code, National Electrical Code, and Uniform Housing Code, that generally apply equally to all buildings, structures and real property in City.

3.2.4. Any new or amended City-wide public works improvement standards that are generally applied equally to all real property and public improvements in the City.

3.2.5. Any growth limitation ordinance, resolution, rule, regulation or policy (including, but not limited to, a City sewer or water connection moratorium or limitation) that is adopted on a uniformly applied, City-wide or area-wide basis and is necessary to prevent a condition injurious to the health, safety or welfare of City residents, in which case City shall treat Property Owner in a uniform, equitable and proportionate manner with all properties, public and private, which are impacted by that public health, safety or welfare issue.

**3.3. Annexation.** City agrees to apply to Yuba County Local Agency Formation Commission for annexation of the Property to the City and to cooperate with Property Owner and the Local Agency Formation Commission in annexing the Property to the City.

**4. PROPERTY OWNER OBLIGATIONS.** Property Owner at its sole cost and expense shall comply with the following obligations.

**4.1. City Fees.**

4.1.1. Processing Fees and Charges. Property Owner shall pay those processing, inspection, plan checking, and monitoring fees and charges required by City under the then current and applicable regulations (including any post-Effective Date increases in such fees and charges and new fees and charges) for processing applications and requests for City permits, approvals and other entitlements, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions.

4.1.2. Development Fees. For any future development and building on the Property, Property Owner agrees to pay (a) the City development impact fees in accordance with Wheatland Municipal Code chapter 2.27, as the same may be amended from time to time, and the resolutions adopted pursuant to chapter 2.27, in the applicable fee types and amounts in effect at the time of building permit issuance (the “City Development Fees”), and (b) the excise tax on new development in accordance with Wheatland Municipal Code chapter 3.30.

4.1.3. Nothing in this Agreement shall apply to, limit or restrict, applicable development fees and similar fees imposed by governmental agencies other than City, including, but not limited to, local school districts, reclamation districts, joint powers authority, County of Yuba, and/or regional agencies.

4.1.4. Property Owner agrees not to oppose, protest or challenge the City Development Fees to be imposed and collected pursuant to this Agreement. Except as otherwise provided by this Agreement, nothing in this section shall be construed to limit the right of Property Owner to oppose, protest or challenge any proposal to adjust existing fees or charges or to adopt new fees or charges. In addition, nothing in this Agreement shall prevent or preclude the City from adopting assessments, fees and charges (other than fees imposed on new development) or special taxes on property within the City to fund capital facilities, public improvements and/or services.

**4.2. Admissions Fee.**

4.2.1. Background. The parties acknowledge that (a) the Property’s annexation to the City and subsequent use and development of the Property will require City to provide police, street maintenance and other municipal services to and for the Property and its guests and invitees, and (b) the property tax, sales tax and other revenue from the Property to be received by City will be inadequate to cover the costs of the services. In order to help pay for these services and in exchange for the vested rights conferred by this Agreement, Property Owner agrees to collect and pay to City an Admissions Fee as provided in this section 4.2.

4.2.2. Definitions. For purposes of this section 4.2, the following definitions apply:

4.2.2.1. “Admission Charge” means any charge (whether or not so designated) to a Patron for the right or privilege to enter or occupy the Property or to participate in any Event on the Property. It shall also mean group sales, subscription, advance sales/payments and season passes.

4.2.2.2. “Admissions Fee” means the fee to be imposed and collected by Property Owner pursuant to this section.

4.2.2.3. “Event” means any entertainment, amusement, recreational or sport event or activity that a person may participate in or observe and for which an Admission Charge is imposed, and shall include, but shall not be limited to, train and amusement rides, corn maze, petting zoo, circus, movies and shows of all kinds, theatrical and musical performances, sporting and athletic contests and events, miniature golf, fairs, carnivals, and any other form of entertainment, amusement, recreation or sport.

4.2.2.4. “Patron” shall mean any person who pays or on account of whom is paid any Admission Charge.

4.2.3. Collection of Admissions Fee. Property Owner agrees to impose and collect an Admissions Fee in an amount equal to five percent of the price of the Admission Charge on any Admission Charge collected by Property Owner or its employees, officers, agents, licensees or concessionaires. Property Owner shall collect the Admissions Fee from any Patron when he or she pays an Admission Charge or purchases an admission ticket, subscription, advance sales or season pass/ticket. Property Owner shall collect and hold the Admissions Fee revenue in trust until the same is remitted to the City as provided below.

4.2.4. Exemptions. Parking fees, food sales, produce sales, and merchandise sales shall be exempt from the Admissions Fee. If any Admissions Charge for a package deal or arrangement includes payment for entry and/or an Event or Events together with an exempt item or items, then Property Owner shall fairly and reasonably segregate the Admissions Charge into amounts for exempt and non-exempt items based on relative value, and Property Owner shall impose, collect and remit the Admissions Fee on only the non-exempt portion.

4.2.5. Reporting and Remitting. Within 15 days after the end of each month, Property Owner shall prepare and file a return with the City showing the monthly Admission Charges collected per Event or entry, the total Admission Charges collected, and the amount of the Admission Fee revenue collected from Patrons. At the time the return is filed, the full amount of the collected Admissions Fee revenue shall be remitted to the City. Those amounts not paid shall immediately become delinquent. Returns and payments are due and payable immediately upon cessation of business by the Property Owner for any reason.

4.2.6. City Use of Admissions Fee Revenue. City may use the Admissions Fee revenue as follows: 50% of the collected revenue shall be deposited in the City General Fund and may be used by City for any General Fund purpose; and, 50% of the collected revenue shall be deposited by City in a special fund and may be used for any public project that that is approved in writing by City and Property Owner.

4.2.7. Delinquency. If Property Owner fails to timely file an Admissions Fee return or remit collected Admissions Fee revenue, it shall pay a penalty of ten percent of the Admissions Fee amount. In addition to the penalty, if Property Owner fails to timely remit any Admissions Fee, it shall pay interest at the rate of one and one-half percent per month or fraction thereof on the amount of fee, exclusive of penalties, from the last day of the month following the monthly period for which the amount or any portion thereof should have been paid until the date of payment.

4.2.8. Records. Property Owner shall keep and preserve all records sufficient in nature to determine the paid Admission Charges collected and the Admissions Fee amount that is due to the City. Records that shall be kept include, but are not limited to, daily cash receipts, admission records, cash

register tapes. City may examine and audit the books, papers, records and equipment of Property Owner and may investigate Property Owner's Property-related business in order to verify the accuracy of Admissions Fee returns and remittances.

**4.3. CEQA Mitigation Measures and Zoning Regulations.** Property Owner agrees to be bound by, and shall perform, all mitigation measures contained in the Mitigated Negative Declaration and identified in the mitigation monitoring plan as being a responsibility of Property Owner and the regulations and conditions of the Bishop's Pumpkin Farm Planned Development Zone ordinance.

**4.4. Compliance with Laws.** Property Owner shall comply with all applicable federal, state, City (except as otherwise provided by this Agreement), and other governmental statutes, regulations, codes, ordinances and other laws (including permit and license requirements) relating to the use and development of the Property.

## **5. DEFAULT, REMEDIES, TERMINATION.**

### **5.1. Default.**

5.1.1. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any term or condition of this Agreement, the party alleging such default or breach shall give the other party not less than 30 days notice in writing specifying the nature of the alleged default and the manner in which the default may be satisfactorily cured. During any such 30-day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings. Nothing in this section shall preclude the City from imposing penalties and interest as may be permitted under section 4.2.7.

5.1.2. After notice and expiration of the 30-day period, if the default has not been satisfactorily cured or remedied, the non-defaulting party at its option may institute legal proceedings pursuant to section 5.2 or give notice of intent to terminate the Agreement pursuant to the Development Agreement Law and implementing City ordinance. Following notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within 30 days as provided by the Development Agreement Law and implementing City ordinance.

5.1.3. Following consideration of the evidence presented in the review before the City Council, either party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

**5.2. Legal Action.** In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation, or to compel specific performance. In no event shall City or its officers, employees or agents be liable in damages for any breach of this Agreement, it being expressly understood and agreed that the sole remedy available to Property Owner for a breach of this Agreement by City shall be a legal action in mandamus, specific performance, injunction or declaratory relief to enforce the Agreement.

**5.3. Effect of Termination.** If this Agreement is terminated following any event of default by Property Owner or for any other reason, such termination shall not affect the validity of any building or improvement within the Property that is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a valid building permit issued by the City or County of Yuba. Furthermore, no termination of this Agreement shall prevent Property Owner from



completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City or County of Yuba that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with the building permit in effect at the time of such termination.

**5.4. Force Majeure.** Performance by either party under this Agreement shall not be deemed to be in default where delays or default are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation (including litigation and appeals brought by any third party challenging City approval of any or all of the Entitlements), or similar bases for excused performance. If written notice of such delay is given to City within 30 days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

**5.5. Annual Review.** At least every 12 months during the term of this Agreement, City shall review the extent of good faith substantial compliance by Property Owner with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to Government Code section 65865.1 and the monitoring of CEQA mitigation measures. Property Owner shall be responsible for the cost reasonably and directly incurred by the City to conduct such annual review, the payment of which shall be due within 30 days after conclusion of the review and receipt from City of the bill for such costs. Upon written request by the City Planning Director, Property Owner shall provide such information as may be necessary or appropriate in order to ascertain compliance with this Agreement.

## **6. INDEMNIFICATION AND HOLD HARMLESS.**

**6.1. Indemnity.** Property Owner and its successors-in-interest and assigns shall indemnify, defend, protect and hold harmless City, and its officers, employees, agents and volunteers, from and against any and all liability, losses, claims, damages, expenses, and costs (including attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of or in connection with performance and actions under this Agreement by Property Owner and/or its contractors, subcontractors, consultants, agents or employees, or failure to perform or act under this Agreement, except such loss or damage that was caused by the sole negligence or willful misconduct of City or except as otherwise limited by law. Property Owner also shall defend, indemnify and hold harmless City, and its officers, employees, agents and volunteers from any lawsuit, claim or liability arising out of the execution, adoption or implementation of this Agreement and/or the Entitlements. The indemnification obligations under this section shall survive and continue in full force and effect after termination of this Agreement for any reason with respect to any actions or omissions that occurred before the date of termination.

**6.2. Waiver.** In consideration of the benefits received pursuant to this Agreement, Property Owner, on behalf of itself and its successors-in-interests and assigns, waives and covenants not to sue City or any of its officers, employees, agents or volunteers for any and all causes of action or claims that it might have under City ordinances or the laws of the State of California or the United States with regard to any fees and payments provided by this Agreement or other conditions imposed by this Agreement.

**6.3. Defense of Agreement.** City and Property Owner agree to cooperate, and to timely take all actions necessary or required to uphold the validity and enforceability of this Agreement and the Entitlements, subject to the indemnification provisions of Section 6.1. The City and Property Owner shall promptly notify one another of any claim, action, or proceeding brought forth within this time period. Property Owner and City shall select joint legal counsel to conduct such defense

**and which legal counsel shall represent both the City and Property Owner in defense of such action (unless, under the circumstances, single legal counsel could not represent both Parties because of a conflict of interest).**

## **7. DEEDS OF TRUST AND MORTGAGES.**

**7.1. Mortgagee Protection.** This Agreement shall be superior and senior to all liens placed upon the Property or any portion of it after the date on which this Agreement is recorded, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against all persons and entities, including all deed of trust beneficiaries or mortgagees ("Mortgagees") who acquire title to the Property or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

**7.2. Mortgagee Obligations.** Upon receipt of a written request from a foreclosing Mortgagee, City shall permit the Mortgagee to succeed to the rights and obligations of Property Owner under this Agreement, provided that all defaults by Property Owner under this Agreement that are reasonably susceptible of being cured are cured by the Mortgagee as soon as is reasonably possible. The foreclosing Mortgagee shall comply with all of the provisions of this Agreement.

**7.3. Notice of Default to Mortgagee.** If City receives notice from a Mortgagee requesting a copy of any notice of default given to Property Owner and specifying the address for sending notice, City shall endeavor to deliver to the Mortgagee, concurrently with notice to Property Owner, all notices given to Property Owner describing all claims by the City that Property Owner has defaulted under this Agreement. Each Mortgagee shall have the right during the same period available to Property Owner to cure or remedy, or to commence to cure or remedy, the condition of default claimed, or the areas of noncompliance set forth in City's notice.

## **8. MISCELLANEOUS PROVISIONS.**

**8.1. Estoppel Certificate.** Either party may from time to time deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe the nature of such default. The party receiving a request under this Agreement shall execute and return such certificate within 30 days following the receipt thereof. City acknowledges that transferees and mortgagees of Property Owner may rely upon a certificate under this Agreement.

**8.2. Successors.** This Agreement runs with the Property. From and after recordation of this Agreement against the Property, the burdens of the Agreement shall bind, and the benefits of the Agreement shall inure to, successor owners of the Property or any portion of the Property. (Government Code section 65868.5.) Upon transfer of the Property or any portion of it, the transferee shall be the Property Owner with all rights and obligations under this Agreement with respect to such conveyed property.

**8.3. Integration.** This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or

written, that may be related to the subject matter of this Agreement, except those other documents that are expressly referenced in this Agreement.

**8.4. Construction and Interpretation.** The parties agree and acknowledge that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

**8.5. Waiver.** The waiver at any time by any party of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

**8.6. Severability.** If any term, covenant or condition of this Agreement or the application of the Agreement to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall remain valid and enforceable to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a party of an essential benefit of its bargain under this Agreement, then such party so deprived shall have the option to terminate this entire Agreement from and after such determination.

**8.7. Relationship of Parties.** Nothing in this Agreement shall be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the parties.

**8.8. No Third Party Beneficiaries.** This Agreement shall not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the parties, their respective successors and permitted transferees and assignees, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any of its terms.

**8.9. Governing Law.** Except as otherwise required by law, this Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

**8.10. Notices.** Any notice, demand, invoice or other communication required or permitted to be given under this Agreement, the Development Agreement Law or implementing ordinance shall be in writing and either served personally or sent by prepaid, first class U.S. mail and addressed as follows:

City:

Property Owner:

City Clerk  
City of Wheatland  
111 C Street  
Wheatland, CA 95692

Any party may change its address by notifying the other party in writing of the change of address.

CITY OF WHEATLAND

PROPERTY OWNER

By: \_\_\_\_\_  
Stephen L. Wright  
City Manager

By: \_\_\_\_\_  
William Bishop  
  
\_\_\_\_\_  
Sandra Bishop



ACKNOWLEDGMENT BY NOTARY PUBLIC  
[Cal. Civ. Code ' 1189]

State of California       )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, a notary public,  
personally appeared \_\_\_\_\_, personally known to me (or proved to  
me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal

Signature: \_\_\_\_\_ (Seal)